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S E C R E T SECTION 01 OF 03 TEL AVIV 000417

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SUBJECT: IDF MAG MANDELBLIT ON IDF INVESTIGATIONS INTO
OPERATION CAST LEAD

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1C. TEL AVIV 182
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Classified By: Ambassador James B. Cunningham for reasons 1.4 (b),(d).

1. (S) Summary: IDF Military Advocate General Mandelblit updated the Ambassador on February 17 on the progress of investigations into allegations of misconduct during Operation Cast Lead, including providing a preview of additional findings to be published before the March 24 Human Rights Council meeting. Mandelblit noted concern with the Palestinian Authority's effort to undermine Israel through the International Criminal Court and hoped the U.S. would weigh in with both the PA and the ICC, and publicly state our view of the ICC's lack of jurisdiction. He warned that PA pursuit of Israel through the ICC would be viewed as war by the GOI. No decision had been made regarding an independent commission to review the IDF investigations. Mandelblit noted what he viewed as the lack of political and popular will to initiate such an inquiry at this time, and suggested that given differences of opinion within the government, the question would be held in abeyance as his investigation progressed. End Summary.

12. (SBU) Military Advocate General Avichai Mandelblit met with the Ambassador on February 17 to update him on the progress of IDF investigations into allegations surrounding Operation Cast Lead. IDF Head of the International Law Department Col. Liron Libman, along with Gil Limon from the same department, and Maj. Noa Meir from the IDF J-5's North America Desk also attended the meeting, as did DATT and PolOff.

13. (C) Mandelblit said several delegations at the UN had responded favorably to Israel's presentation of its report "Gaza Operation Investigations: An Update," including the British, French, and Russian delegations. He noted that the French, who hold the UNSC presidency this month, suggested that the Goldstone Report would eventually go away as Israel released such reports on its investigations. Libman also noted positive meetings with delegations from the Netherlands and Italy, and with the UN Secretariat. Mandelblit assessed that Israel fully met the UN resolution criteria of carrying out independent and credible investigations that conformed to international standards, and said he did not think it would go to the UNSC or even towards an assessment by the UNSYG. He also noted that the Palestinian Authority's report only dealt with the West Bank, rather than Gaza, and that any UN report would highlight the contrast between Israel's and the PA's thoroughness of responses.

Help with PA and the ICC?

¶4. (S) Mandelblit asked for U.S. assistance with regard to the International Criminal Court following PA Justice Minister Ali Kashan's visit to ICC Prosecutor Luis Moreno-Ocampo, during which he asked the prosecutor to take jurisdiction for investigating alleged Israeli war crimes in the occupied territories since 2002. Mandelblit said several legal opinions had been delivered to Ocampo noting that the ICC had no legal jurisdiction due to the PA's lack of statehood, its lack of control over Gaza, and the fact that the Oslo Agreement did not grant the PA authority over Israel even in Area A. He also noted that the sufficiency of Israeli investigations clearly met the ICC's complementarity standard even if it somehow decided it had jurisdiction. Mandelblit noted that next month the PA would deliver a paper to Ocampo on ICC jurisdiction. He commented that Israel's relations with the PA had been on a positive track, but described the PA's actions as "war to take us to the ICC" and hoped the U.S. would help the PA understand the gravity of its actions. The Ambassador affirmed that the U.S. had consistently pressed the PA to cease such actions and had received assurances before Goldstone that the PA would freeze such attempts.

¶5. (S) Mandelblit said the GOI was troubled that the ICC issue was not yet off the table and that it appeared to be a political decision for Ocampo, with much pressure coming from the Arab League for the ICC to deal with Western countries rather than "just Africa." Mandelblit also noted the upcoming June ICC Review Conference in Kampala and expressed concern that the U.S. might consider joining the ICC at some point. Libman noted that the ICC was the most dangerous issue for Israel and wondered whether the U.S. could simply state

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publicly its position that the ICC has no jurisdiction over Israel regarding the Gaza operation.

Independent Commission of Inquiry?

¶6. (C) In response to the Ambassador's direct question, Mandelblit said the GOI had not made a decision regarding a commission of inquiry to review IDF investigations. However, he explained that he had been against the setting of February 5th as the date for such a decision to be taken, and said the decision was still in the air. He explained that the GOI intends to issue periodical updates similar to the one just published, with the next one coming out in a month. The GOI hopes that eventually Goldstone would "vanish." The Ambassador responded that would depend on how well Israel makes its case. Mandelblit specifically said the issue had "not been decided yet," but he added that, in his opinion, "nobody thinks we should do it" -- not just in government circles, but the Israeli public as well. He also affirmed that the Goldstone Report's allegation that policy directives broke international law would become clearly unsupportable as the investigations clarified the nature of the incidents cited to indicate such a policy.

Contents of the Next Update:

¶7. (C) Mandelblit said he would have the next update prepared within one month, in time for the Human Rights Council meeting on March 24 in Geneva. That update would contain five to ten more finalized accounts of incidents, bringing the total of publicly released cases to 50-70% of all cases. Specifically, the next update would include:

- Attacks on Hamas police: the GOI would publish legal analysis, some intelligence, and its findings from six incidents that involved attacks on Hamas police, showing that the police were part of Hamas' military force.

- Saraya prison: the GOI would demonstrate that the military command center located in the large complex near the prison

was a clear military target and that the prison was specifically not allowed to be targeted.

- the al-Bader flour mill: more details would be released following upcoming meetings with the UN Mine Action Team that disposed of one-third of a precision bomb two weeks after hostilities ended. Mandelblit's team would also analyze the Human Rights Watch video from the mill's owner released only on February 7 for the first time, following Israel's submission to the UNSYG. Mandelblit said it was certain that a 500-pound bomb should make some blast pressure marks on the building and that it was definitely not delivered by air as it would have created some type of hole in the roof, which was not there. He confirmed that the mill was not a military target, was 350 meters away from the closest military target, and that no bombs had strayed into it from the air. Mandelblit believed it was most likely that someone had planted a bomb there within the two weeks before UNMAT disposed of it.

- The report would also contain findings on the Jaba factory, the Hajjaj house, and the Al-Wadiya food factory.

Updates on Five Cases

18. (C) Regarding the five cases A/S Posner raised, Mandelblit said the investigations of most were not finalized, but he wanted to provide updates:

- Abed Rabbo House - Mandelblit said the investigation into the human shielding case was not finished, but the suspicion was that IDF actions were "out of line" and legal steps would be taken in the next few days, though he was unsure if they would result in a court martial or disciplinary action. Mandelblit noted that he transferred that investigation from a Command investigation, the results of which cannot be taken to a military court, to a Military Police criminal investigation before the Goldstone Report and that only one of the seven MP cases came from the Goldstone Report. He also noted there were two stages in the incident, one involving a low-ranking officer and the second involving the knowledge of a battalion commander.

- Adayan condolence tent - Mandelblit said this investigation was finished and would be referred to IDF Chief of General Staff Ashkenazi for a possible doctrinal change on the use of

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flechettes in urban areas, but that it was not criminal. After gathering almost 20 testimonies, Mandelblit said he understood the exact situation, which involved preparations to launch a rocket from a relatively open area almost a kilometer away from the soldiers. The soldiers did not see the condolence tent for the Adayan family. The choice of weapons was limited as machine guns would not be efficient at that distance and tank shells could have gone through houses if they missed the group involved in the rocket launch. The choice of tank-fired flechettes appeared to be the only appropriate choice, but Mandelblit was referring it to Ashkenazi along with another case on flechette use (the Azam case, which was not in the Goldstone Report) to determine whether flechettes were indeed the only option and whether they were appropriate for future urban warfare given that the only uses of flechettes in the three weeks of fighting produced these two problematic cases with civilian casualties. (Note: Israeli flechettes are modified versions of the U.S.-made M494 APERS-T rounds, provided to Israel in the 1970s, that disperse 5,000 small flechette darts over a 300m long and 94m wide area at a set distance, according to Janes. End note.)

- Sawafeary Chicken Farm - Mandelblit said this investigation was finished and he was writing it up for the next public report. He said Hamas fighters had taken cover in some greenhouses and the chicken farm and that soldiers demolished

the farm on January 10, after first making two holes that enabled the chickens to run out. He showed the Ambassador aerial photography of the site before and after destruction, noting the locations where the soldiers had taken as outposts and the necessity of destroying the site to protect themselves from the fighters inside. He noted there was a tunnel in the farm as well, but that it was not a factor in the case since the soldiers were unaware of the tunnel. Mandelblit noted that it was the combat commander's decision to destroy a facility during combat, but that perhaps there should be a distinction made when securing an outpost and involve a higher ranking officer in that decision.

- Qadma Mosque - Mandelblit said the facts were known: A UAV shot at two Hamas fighters in front of the mosque and 16 casualties resulted inside the mosque due to an open door through which shrapnel entered during a time of prayer. He said only one person had been seen entering the door in 40 minutes prior to the attack and it was a new mosque that did not look like a mosque. He also noted it was not on all maps and the UAV controller did not know it was a time of prayer. Mandelblit said he referred the case to the Chief of General Staff for a decision. He added that at least five of the casualties were Hamas militants, but that he considered them all unintended casualties.

- Sumuni Family - Mandelblit said this case was also finished and given to Ashkenazi for a decision. This incident involved an RPG attack from one house with return fire on the neighboring house. A colonel was involved who was certain he was attacking the house that shot the RPGs. Ashkenazi would decide if the colonel's actions were reasonable.

Cunningham